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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT TACOMA

10 WARM BROTHERS, INC
11 a Washington Corporation,

12 Plaintiff,

13 v.

14 NORTH EAST HARDWOOD FLOORING, Inc.,
15 et.al

16 Defendants
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Hon. Ronald B. Leighton

Case No. 3: 09-cv-05223—RBL

**CORRECTED ORDER GRANTING
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT NORTH EAST
HARDWOOD FLOORING, INC.**

21 The Court has considered the evidence and points and authorities presented in
22 Plaintiff's Motion for Default Judgment Against Defendant North East Hardwood Flooring,
23 Inc. ("North East") ("Plaintiff's Motion"), as well as the Complaint and the documents on file
24 herein leading to the entry of North East's default, Dkt # 9, August 12, 2009. Based thereon,
25 the Court, pursuant to F.R.Civ.P. 55(b)(2), grants Plaintiff's Motion, and finds, determines
26 and orders as follows:
27

28 [PROPOSED] ORDSEER GRANTING
DEFAULT JUDGMENT MOTION 1

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1000 Second Av. Ste. 3310
Seattle WA 98104
Tel. (206)-755-1641

1 1. Plaintiff Warm Brothers, Inc. ("Warm Brothers") is the owner of United States Patent
2 No. 6,533,185 ("the '185 Patent") which was duly issued March 18, 2003 by the United States
3 Patent and Trademark Office. By law, the '185 Patent is presumed valid (35 U.S.C. § 282);
4 and no challenge to its validity or enforceability has been made in this litigation.

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6 2. In this action, the default of North East was properly entered August 12, 2009 (Docket
7 # 9) pursuant to F.R.Civ.P. 55(a) based on North East's failure to answer or defend, as
8 described in Warm Brothers' counsel's Declaration and Request for Entry of Default (Docket
9 # 6, see also Docket # 7, Affidavit of Service). North East has not appeared in this action at
10 any time.

11 3. In the allegations of its complaint and in its Motion for Default Judgment, Warm
12 Brothers has made a prima facie showing of facts sufficient to show that in this action this
13 Court has personal jurisdiction over North East (a New York Corporation) comporting with
14 constitutional due process and thus also with Washington's "long arm" statute, RCW 4.28.185,
15 based on the relationship of Warm Brothers' patent infringement claim against North East to
16 North East minimum contacts with this District.

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18 4. Defendant North East has been infringing and continues to infringe the '185 Patent -
19 specifically Claims 1, 2, 3 and 15 of said Patent, by making, selling, offering to sell and using,
20 in the United States, various radiant heating panels currently under the name Sunboard or other
21 names including the word "Sunboard." Such products are herein collectively called
22 "Sunboard panels."

23
24 5. A permanent injunction against further infringement of the '185 patent is warranted,
25 and the Court has determined to grant the same in a separate Order of Permanent Injunction
26 Against Defendant North East Hardwood Flooring, Inc. entered and filed contemporaneously
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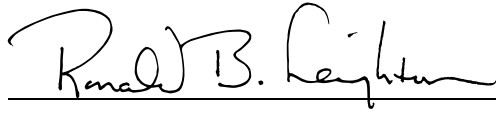
1 herewith. That Order sets forth the terms of and reasons for issuance of the Permanent
2 Injunction.

3 6. Based on the facts alleged in Plaintiff's complaint and set forth in Plaintiff's Motion
4 and supporting evidence, Warm Brothers is also entitled to recover from North East damages
5 for past infringement of the '185 Patent. For purposes of its Motion for Default Judgment,
6 Plaintiff has elected to limit its claim for such damages to a reasonable royalty calculated as a
7 dollar amount per quantity of Sunboard panels sold by North East since November 4, 2008,
8 the date North East was notified of the infringement. Plaintiff contends that at minimum this
9 royalty should be \$0.30 per square foot. Based on the evidence submitted in Plaintiff's
10 Motion, the Court finds that this amount represents no less than a reasonable royalty for
11 North East's use of the invention. Therefore, Warm Brothers is entitled to recover from
12 North East damages in the amount of \$0.30 per square foot of all Sunboard panels sold by
13 North East from November 4, 2008 up to the date that North East ceases sale of such panels.

14 7. Pursuant to F.R.Civ.P 55(b)(2)(A) the Court needs to and will conduct an accounting to
15 determine the total amount to be awarded to Warm Brothers in accordance with the finding
16 stated in paragraph 5 above. Therefore, **it is ordered**, that within 30 days from service of this
17 Order on North East, defendant North East shall file with this court, and serve on counsel for
18 plaintiff Warm Brothers, a report which provides documentation of all of North East's sales
19 of Sunboard panels since November 4, 2008, sufficient to show, for each sale, at least the
20 date and number of square feet of panels thereby sold. Thereafter, the Court will determine
21 the total amount of damages to be recovered by Warm Brothers from North East, and will
22 enter judgment accordingly.

23 8. Warm Brothers is also entitled to recover from North East Warm Brothers' costs of suit,
24 in the amount of \$525.00.

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2 DATED: This 10TH day of November, 2009
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6 RONALD B. LEIGHTON
7 UNITED STATES DISTRICT JUDGE
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